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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE
COMMITMENT OF:

H.H.,

Appellant-Respondent,

vs.

THE HEALTH AND HOSPITAL CORPORATION)
OF MARION COUNTY, d/b/a WISHARD)
HEALTH SERVICES/MIDTOWN COMMUNITY)
MENTAL HEALTH CENTER,)

Appellee-Petitioner.)

No. 49A05-0708-CV-491

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Deiter, Judge
Cause No. 49D08-9803-MH-103

April 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

H.H. appeals an order granting the petition, filed by the Health and Hospital Corporation of Marion County, d/b/a Wishard Health Services/Midtown Community Mental Health Center (“Midtown”),¹ for his involuntary regular commitment.² H.H. asserts that there was insufficient evidence to establish that he was dangerous to others. We affirm.

Facts and Procedural History

The evidence most favorable to the judgment reveals that a January 25, 2007 incident prompted police to transport H.H. to the Wishard Hospital Psychiatric Emergency Room, where emergency detention procedures were initiated on January 26, 2007. On February 1, 2007, upon the expiration of the seventy-two-hour hold, Dr. Michael DeMotte, on behalf of Midtown, filed a petition for temporary involuntary commitment. On February 7, 2007, Dr. DeMotte and H.H. testified at a hearing on the matter. At the conclusion of that hearing, the presiding commissioner found H.H. “gravely disabled, and dangerous to others,” granted the petition, committed H.H. through May 8, 2007, and ordered that he take all medications as prescribed, attend all clinic sessions, maintain his address and phone number with the court, and not harass or assault anyone. In March 2007, H.H. appealed his ninety-day commitment.

¹ Although Midtown’s brief was filed two days late, counsel’s candid explanation for the miscalculation, coupled with the fact that H.H.’s counsel does not object, have led us to grant the Motion to Consider Appellee’s Belated Brief. In our March 14, 2008 order granting the motion, we also offered H.H. fifteen days in which to file a reply brief. As of April 16, 2008, none was refiled.

² An involuntary commitment for a period to exceed ninety days is a “regular” commitment. *See* Ind. Code Ch. 12-26-7. In contrast, an involuntary commitment for a period of less than ninety days is a “temporary” commitment. *See* Ind. Code Ch. 12-26-6.

In an unpublished decision, we affirmed the temporary commitment order. *In the Matter of Commitment of H.H.*, No. 49A02-0703-CV-237 (Ind. Ct. App. Sept. 29, 2007).

After the temporary commitment had expired and before we issued the above-referenced opinion, H.H. was admitted to Wishard Hospital Psychiatric Unit from the Marion County Jail. Tr. at 6, 12.³ Specifically, on July 24, 2007, H.H. “came in very agitated, wild, [with] very rapid pressured speech, flight of ideas, very illogical thought processes, sever[e] delusions of grande[u]r, paranoid delusions” and displaying “agitated threatening behaviors.” *Id.* at 7. During the initial interview, he made threatening comments including that if someone “tried to inject him with medications, he would kill somebody. Things will become violent.” *Id.* Based on H.H.’s presentation and a review of his medical records, Dr. Kenneth Harvey diagnosed him with bi-polar disorder, manic episode, severe with psychosis, and cocaine dependence. *Id.*

While on the unit, H.H. stated he would decide when, if, and under what circumstances he would take medications. *Id.* at 8. In refusing medications, he opined, “medications are sometimes evil, some how part of a scheme by the medical profession to control people, to generate profit.” *Id.* On the morning of July 26, 2007, H.H. became “very threatening, agitated, verbally and physically intimidating toward staff and others” on the unit. *Id.* at 9. In response, Tracy Link, the registered nurse on duty, called security and drew up intramuscular medications for H.H. Although Link offered oral medication to calm him, H.H. refused. H.H. was then given injections of Haldol and Ativan, and security left. *Id.*

³ According to H.H., he “was arrested on May 21st at 11:26.” Tr. at 27. We have no details regarding the arrest, but it appears that H.H. was in custody from that time until he was transported to

However, the medications did not appear to be calming H.H., who then directly threatened Link. When H.H. stated, “I’ll kill you” to Link, she called security again and readied the seclusion room to keep the unit safe. *Id.* at 22. H.H. began walking quickly toward her, but security arrived and redirected him to the seclusion room. Once H.H. was in the seclusion room, Link closed and locked the door, at which point H.H. hit the door very hard with both hands, looked out the window at Link, and again stated that he would kill her. Link was so scared and intimidated by the encounter, she cried for twenty minutes before being able to return to her job. *Id.* at 23.

On July 27, 2007, Midtown filed a petition for the involuntary regular commitment of H.H. App. at 57-62. On August 2, 2007, the court held a commitment hearing at which Dr. Harvey, Link, and H.H. testified. At the conclusion of that hearing, the court granted Midtown’s petition and explained its rationale as follows:

The Court finds that [H.H. is] basically a danger to others even though [H.H.] has not hit anybody, or followed through with any of his threats. He has threatened to kill some of the staff members on the unit. The Court will not wait until he has carried that out, or [tried] to carry that out to determine he is actually dangerous. I think the fright that was displayed by Ms. Link shows that that threat was taken serious[ly] by her. And, whether or not he got to carry those out, I think is another thing. But, I think the intimidation and fright that he displayed toward others, makes him dangerous to others. Commitment expires August 2nd, ’08.

Tr. at 48.

Discussion and Decision

When reviewing the sufficiency of the evidence in commitment cases, we look only at the evidence and reasonable inferences therefrom most favorable to the trial court’s

Wishard in July 2007. *Id.*

judgment. *In re Commitment of A.W.D.*, 861 N.E.2d 1260, 1264 (Ind. Ct. App. 2007), *trans. denied*. We may not reweigh the evidence or judge the credibility of the witnesses. *Commitment of M.M. v. Clarian Health Partners*, 826 N.E.2d 90, 96 (Ind. Ct. App. 2005), *trans. denied*. “If the trial court’s commitment order represents a conclusion that a reasonable person could have drawn, we will affirm the order even if other reasonable conclusions are possible.” *Id.*

To demonstrate a person should be committed involuntarily, a petitioner must show “by clear and convincing evidence that: (1) the individual is mentally ill and either dangerous or gravely disabled; and (2) detention or commitment of that individual is appropriate.” Ind. Code § 12-26-2-5(e). Indiana Code Section 12-7-2-53 defines “dangerous” as “a condition in which an individual as a result of mental illness, presents a substantial risk that the individual will harm the individual or others.” A trial court is not required to wait until harm has nearly or actually occurred before determining that an individual poses a substantial risk of harm to others. *See Matter of Commitment of Gerke*, 696 N.E.2d 416, 421 (Ind. Ct. App. 1998) (holding that a commitment premised upon a trial court’s prediction of dangerous future behavior, without prior evidence of the predicted conduct, was valid); *In the Matter of the Commitment of M.Z. v. Clarian Health Partners*, 829 N.E.2d 634, 639 (Ind. Ct. App. 2005) (upholding finding of dangerousness, despite no prior threats/actual harm, where doctor testified that M.Z.’s paranoia might cause him to be so frightened that he would inadvertently harm someone to protect himself), *trans. denied*.

In recounting the events of July 26, 2007, Dr. Harvey testified that H.H. had become “very threatening, agitated, verbally and physically intimidating toward staff and others on

the unit.” Tr. at 9. After refusing oral medications, H.H. was given injections of medication.

He “received additional medication by injection due to concerns about ongoing symptoms of aggressiveness, and the risk of injury of [H.H.] or others on the unit.” *Id.* at 9, 18. Dr. Harvey noted that staff was “behaving as if they did not want to interact with” H.H. *Id.* at 11. H.H. told Dr. Harvey, “if people felt threatened or intimidated by him, that that was their problem, that he was not aggressive.” *Id.* at 11. A decision was then made for H.H.’s safety and the safety of others to “put him on high risk, assault precautions at that point. And, he stayed in a seclusion area until he was transferred to the hospital’s detention unit.” *Id.* When asked directly if H.H. is a danger, Dr. Harvey replied, “I believe he has not been suicidal during this stay, but I believe his behavior is so erratic, so unpredictable, that it could indirectly result in injury to himself.” *Id.* Dr. Harvey’s detailed a prescribed treatment plan:

There are concerns about long term compliance, even short term compliance given [H.H.’s] repeated comments about not wanting to take medications, not believing he needs medications. The plan at this point would be to use long acting injectable Haldol to try and stabilize his condition. Initially, he would be discharged back to the Marion County Jail, and after release from the jail, he’ll be followed through Midtown Community Mental Health Center.

Id. at 11-12. Dr. Harvey viewed this as the least restrictive treatment plan for H.H. *Id.* at 12.

In addition to testifying about the July 26, 2007 incident, Nurse Link provided further insight regarding H.H. She testified that H.H. had to be placed on a particular side of the unit away from certain patients, whom he would otherwise “escalate.” *Id.* at 20. That is, a “few of the male patients with active psychotic symptoms would become worse with their fighting, and bickering” when H.H. was near, yet were calmer when H.H. was moved to the other side

of the unit. *Id.* Link also noted that H.H. used intimidating/threatening tactics, paced manically, had delusional and illogical thought processes, and slammed his hands against doors. *Id.* at 19-21. Link replied affirmatively when asked if she believed H.H. to be a danger to himself or others, and when asked if she thought H.H. would benefit from a regular commitment. *Id.* at 23.

H.H. testified that he has received disability income since 2004 for “Bi Polar,” yet he does not believe he has Bi Polar. *Id.* at 25, 37, 40. As demonstrated below, H.H. only reluctantly takes medication:

Q. [by H.H.’s counsel]: Okay. And, is it correct, you have been taking the pills of the Haldol then, since [the July 26, 2007] incident?

A. [by H.H.]: Yes I did. Because, I wanted to show these people ... I would take a pill if I feel like I need it. Now, are you telling me that I’m out of control, which I really don’t think I’m out of control, but to make you guys feel better, I will go ahead and take these pills. Because, I know I don’t need them, because if I needed it, I wouldn’t be in the Marion County Jail, being in Wishard for something else.

Id. at 36, 38. H.H. admitted that he hit a window and a wall in the unit “because that guy wouldn’t leave me alone.” *Id.* at 30-31, 40.

A review of H.H.’s appeal from his temporary commitment shows that this was not the first time H.H. had been brought to a facility in a manic state, threatened violence, had altercations with staff/other patients, refused medication, and/or had to be secluded. Indeed, the present circumstances are strikingly similar to those that led to H.H.’s temporary commitment earlier in 2007. The evidence presented at the regular commitment hearing shows that H.H.’s condition has yet to stabilize.

Again, without reweighing evidence or attempting to judge credibility on a paper record, we conclude that sufficient evidence was presented to support the finding that H.H. was dangerous to others at the time of the commitment hearing. *See Jones v. State*, 477 N.E.2d 353, 360 (Ind. Ct. App. 1985) (finding sufficient evidence of dangerousness where, *inter alia*, doctor testified that Jones was verbally assaultive and physically threatening to such a degree that she was sequestered from other patients), *trans. denied*; *cf. Commitment of L.W. v. Midtown Cmty. Health Ctr.*, 823 N.E.2d 702, 704 (Ind. Ct. App. 2005) (finding insufficient evidence of dangerousness where *no* evidence of threats presented and where doctor testified that L.W. “has been pleasant and compliant while at the hospital and that he has not been dangerous to others or to himself”); *Matter of Commitment of Linderman*, 417 N.E.2d 1140, 1141 (Ind. Ct. App. 1981) (reversing involuntary commitment for an indefinite period where there was “no evidence” that Linderman ever threatened physical harm to himself or anyone else, let alone actually committed any violence; petition had been filed by jail warden).

We reiterate, “[i]f the trial court’s commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible.” *See C.J. v. Health & Hosp. Corp. of Marion County*, 842 N.E.2d 407, 409 (Ind. Ct. App. 2006); *In re Commitment of Heald*, 785 N.E.2d 605, 613 (Ind. Ct. App. 2003), *trans. denied*. Applying the proper standard of review, we find that there was sufficient evidence of dangerousness, and we conclude that the regular involuntary commitment order represents a conclusion that a reasonable person could have drawn. Ind. Code § 12-7-2-53; Ind. Code § Ind. Code § 12-26-2-5(e); *see In re the Matter of the*

Commitment of C.A. v. Ctr. for Mental Health, 776 N.E.2d 1216, 12 (Ind. Ct. App. 2002) (affirming involuntary regular commitment where evidence was sufficient to show C.A.’s mental illness could be controlled by medication; that prior, less-intrusive attempts to insure ingestion of medication had failed due to C.A.’s lack of cooperation; and that harm may result if medication is not taken).

Affirmed.

BAILEY, J., and NAJAM, J., concur.